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CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 221

Introduced by Assembly Member Anderson
(Coauthors: Assembly Members Benoit, Cook, DeVore, Gaines,
Garrick, Jeffries, Ma, Sharon Runner, Solorio, and Tran)

January 29, 2007

An act to amend Section 16642 of, and to add and repeal Section 7513.7 of, the Government Code, relating to investments.

LEGISLATIVE COUNSEL'S DIGEST

AB 221, as amended, Anderson. Public retirement systems: investments: Iran.

The California Constitution provides that the Legislature may by statute prohibit retirement board investments if it is in the public interest to do so, and providing that the prohibition satisfies specified fiduciary standards.

Existing law prohibits the Public Employees' Retirement System and the State Teachers' Retirement System from investing public employee retirement funds in a company with active business operations in Sudan, as specified. Existing law also requires these retirement systems to sell or transfer any investments in a company with business operations in Sudan. Existing law requires these retirement systems to submit an annual report to the Legislature regarding any investments in a company with business operations in Sudan and the sale or transfer of those investments. Existing law requires the state to indemnify, from the

General Fund, and hold harmless the present, former, and future board members, officers, and employees of, and investment managers under contract with, these retirement systems by reason of any decision to restrict, reduce, or eliminate investments in Sudan, as specified.

This bill would create the California Public Investments Protection Act and additionally prohibit the Public Employees' Retirement System and the State Teachers' Retirement System from investing public employee retirement funds in a company with business operations in Iran, ~~as specified that has invested in, or is engaged in, business operations with entities in the defense, oil, nuclear, or natural gas sectors of Iran or the company is engaged in business operations with an Iranian organization labeled as a terrorist organization by the United States Department of State.~~ The bill would require the Board of Administration of the Public Employees' Retirement System and the Teachers' Retirement Board of the State Teachers' Retirement System to sell or transfer any investments in a company with business operations in Iran, until sanctions have been revoked against Iran. The bill would also require the Board of Administration and the Teachers' Retirement Board to notify the Secretary of State when these sanctions have been revoked against Iran, and these provisions would be repealed following the notice provided by these boards, as specified. The bill would make related legislative findings and declarations.

This bill would require these boards to report to the Legislature any investments in a company with business operations in Iran and the sale or transfer of those investments, subject to the fiduciary duty of these boards, by January 1, 2009, and every year thereafter.

This bill would indemnify from the General Fund and hold harmless the present, former, and future board members, officers, and employees of, and investment managers under contract with these retirement systems.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares as follows:
- 2 (a) The Securities and Exchange Commission has determined
- 3 that business activities in foreign states sponsoring terrorism and
- 4 that are subject to sanctions by the United States may materially
- 5 harm the share value of foreign companies. Shares in these foreign

1 companies may be held in the portfolio of public retirement systems
2 in this state.

3 (b) Publicly traded companies in the United States are not
4 allowed to do business in or with foreign states that the United
5 States Department of State has identified as sponsoring terrorism.

6 (c) Public retirement systems in this state currently invest on
7 behalf of the citizens of California in publicly traded foreign
8 companies that may be at risk due to business ties with foreign
9 states that sponsor terrorism.

10 (d) The Legislature finds that investments in publicly traded
11 foreign companies that have business operations in or with foreign
12 states that the United States Department of State has identified as
13 sponsoring terrorism risks the pensions of the dedicated public
14 employees of this state.

15 (e) Excluding companies with business activities to foreign
16 states that sponsor terrorism from public portfolios will help protect
17 the public retirement systems in this state from investment losses
18 related to these business activities and may improve the investment
19 performance of the public retirement systems.

20 (f) The Legislature finds that it is unconscionable for this state
21 to invest in foreign companies with business activities benefiting
22 foreign states that commit egregious violations of human rights
23 and sponsor terrorism.

24 SEC. 2. Section 7513.7 is added to the Government Code, to
25 read:

26 7513.7. (a) As used in this section, the following definitions
27 shall apply:

28 (1) "Board" means the Board of Administration of the Public
29 Employees' Retirement System or the Teachers' Retirement Board
30 of the State Teachers' Retirement System, as applicable.

31 (2) "Business operations" means maintaining, selling, or leasing
32 equipment, facilities, personnel, or any other apparatus of business
33 or commerce in Iran, including the ownership or possession of real
34 or personal property located in Iran.

35 (3) "Company" means a sole proprietorship, organization,
36 association, corporation, partnership, venture, or other entity, its
37 subsidiary or affiliate that exists for profitmaking purposes or to
38 otherwise secure economic advantage. "Company" also means a
39 company owned or controlled, either directly or indirectly, by the
40 government of Iran, that is established or organized under the laws

1 of or has its principal place of business in the Islamic Republic of
2 Iran.

3 (4) “Government of Iran” means the government of Iran or its
4 instrumentalities.

5 (5) “Invest” or “investment” means the purchase, ownership,
6 or control of stock of a company, association, or corporation, the
7 capital stock of a mutual water company or corporation, bonds
8 issued by the government or a political subdivision of Iran,
9 corporate bonds or other debt instruments issued by a company,
10 or the commitment of funds or other assets to a company, including
11 a loan or extension of credit to that company.

12 (6) “Iran” means the Islamic Republic of Iran, a territory under
13 the administration or control of Iran, or an individual, company,
14 or public agency located in Iran that supports the Islamic Republic
15 of Iran.

16 (7) “Military equipment” means weapons, arms, or military
17 defense supplies.

18 (8) “Public employee retirement funds” means the Public
19 Employees’ Retirement Fund described in Section 20062 of this
20 code, and the Teachers’ Retirement Fund described in Section
21 22167 of the Education Code.

22 (9) “Research firm” means a reputable, neutral third-party
23 research firm.

24 (10) “Substantial action” means a boycott of the government
25 of Iran, curtailing business in Iran until that time described in
26 subdivision (m), or selling company assets, equipment, or real and
27 personal property located in Iran.

28 (b) The board shall not invest public employee retirement funds
29 in a company with business operations in Iran *that meets either of*
30 *the following criteria:*

31 (1) *The company has invested in, or is engaged in, business*
32 *operations with entities in the defense, oil, nuclear, or natural gas*
33 *sectors of Iran.*

34 (2) *The company is engaged in business operations with an*
35 *Iranian organization labeled as a terrorist organization by the*
36 *United States Department of State.*

37 (c) Notwithstanding subdivision (b), the board shall not invest
38 public employee retirement funds in a company that supplies
39 military equipment within the borders of Iran. If a company
40 provides equipment within the borders of Iran that may be readily

1 used for military purposes, including, but not limited to, radar
2 systems and military-grade transport vehicles, there shall also be
3 a strong presumption against investing in that company unless that
4 company implements safeguards to prevent the use of that
5 equipment for military purposes.

6 (d) (1) The board shall, without regard to the provisions
7 regarding competitive bidding, contract with a research firm or
8 firms to determine those companies that have business operations
9 in Iran. Those research firms shall, in the aggregate, obtain data
10 on a majority of companies with business operations in Iran. On
11 or before March 30, 2008, those research firms shall report any
12 findings to the board and those research firms shall submit further
13 findings to the board if there is a change of circumstances in Iran.

14 (2) In addition to the reports described in paragraph (1), the
15 board shall take all of the following actions no later than March
16 30, 2008:

17 (A) Review publicly available information regarding companies
18 with business operations in Iran.

19 (B) Contact other institutional investors that invest in companies
20 with business operations in Iran.

21 (C) Send written notice to a company with business operations
22 in Iran that the company may be subject to this section.

23 (e) (1) The board shall determine, by the next applicable board
24 meeting and based on the information and reports described in
25 subdivision (d), if a company meets the criteria described in
26 subdivision (b) or (c). If the board plans to invest or has
27 investments in a company that meets the criteria described in
28 subdivision (b) or (c), that planned or existing investment shall be
29 subject to subdivisions (g) and (h).

30 (2) Investments of the board in a company that does not meet
31 the criteria described in subdivision (b) or (c) are not subject to
32 subdivision (h) if the company does not subsequently meet the
33 criteria described in subdivision (b) or (c). The board shall identify
34 the reasons why that company does not satisfy the criteria described
35 in subdivision (b) or (c) in the report to the Legislature described
36 in subdivision (i).

37 (f) (1) Notwithstanding subdivision (e), if the board's
38 investment in a company described in subdivision (b) or (c) is
39 limited to investment via an externally and actively managed
40 commingled fund, the board shall contact that fund manager in

1 writing and request that the fund manager remove that company
2 from the fund as described in subdivision (h). On or before June
3 30, 2008, if the fund or account manager creates a fund or account
4 devoid of companies described in subdivision (b) or (c), the transfer
5 of board investments from the prior fund or account to the fund
6 or account devoid of companies with business operations in Iran
7 shall be deemed to satisfy subdivision (h).

8 (2) If the board's investment in a company described in
9 subdivision (b) or (c) is limited to an alternative fund or account,
10 the alternative fund or account manager creates an actively
11 managed commingled fund that excludes companies described in
12 subdivision (b) or (c), and the new fund or account is deemed to
13 be financially equivalent to the existing fund or account, the
14 transfer of board investments from the existing fund or account to
15 the new fund or account shall be deemed to satisfy subdivision
16 (h). If the board determines that the new fund or account is not
17 financially equivalent to the existing fund, the board shall include
18 the reasons for that determination in the report described in
19 subdivision (i).

20 (3) The board shall make a good faith effort to identify any
21 private equity investments that involve companies described in
22 subdivision (b) or (c), or are linked to the government of Iran. If
23 the board determines that a private equity investment clearly
24 involves a company described in subdivision (b) or (c), or is linked
25 to the government of Iran, the board shall consider, at its discretion,
26 if those private equity investments shall be subject to subdivision
27 (h). If the board determines that a private equity investment clearly
28 involves a company described in subdivision (b) or (c), or is linked
29 to the government of Iran and the board does not take action as
30 described in subdivision (h), the board shall include the reasons
31 for its decision in the report described in subdivision (i).

32 (g) Except as described in subdivision (f) or paragraph (2) of
33 subdivision (e), the board, in the board's capacity of shareholder
34 or investor, shall notify any company described in paragraph (1)
35 of subdivision (e) that the company is subject to subdivision (h)
36 and permit that company to respond to the information and reports
37 described in subdivision (d). The board shall request that the
38 company take substantial action no later than 90 days from the
39 date the board notified the company under this subdivision. If the
40 board determines that a company has taken substantial action or

1 has made sufficient progress towards substantial action before the
2 expiration of that 90-day period, that company shall not be subject
3 to subdivision (h). The board shall, at intervals not to exceed 90
4 days, continue to monitor and review the progress of the company
5 until that company has taken substantial action in Iran. A company
6 that fails to complete substantial action or continue to make
7 sufficient progress towards substantial action by the next time
8 interval shall be subject to subdivision (h).

9 (h) If a company described in paragraph (1) of subdivision (e)
10 fails to complete substantial action by the time described in
11 subdivision (g), the board shall take the following actions:

12 (1) The board shall not make additional or new investments or
13 renew existing investments in that company.

14 (2) The board shall liquidate the investments of the board in
15 that company no later than 18 months after this subdivision applies
16 to that company. The board shall liquidate those investments in a
17 manner to address the need for companies to take substantial action
18 in Iran and consistent with the board's fiduciary responsibilities
19 as described in Section 17 of Article XVI of the California
20 Constitution.

21 (i) On or before January 1, 2009, and every year thereafter, the
22 board shall file a report with the Legislature. The report shall
23 describe the following:

24 (1) A list of investments the board has in companies with
25 business operations in Iran, including, but not limited to, the issuer,
26 by name, of the stock, bonds, securities, and other evidence of
27 indebtedness.

28 (2) A detailed summary of the business operations a company
29 described in paragraph (1) has in Iran and whether that company
30 satisfies all of the criteria in subdivision (b) or (c).

31 (3) Whether the board has reduced its investments in a company
32 that satisfies the criteria in subdivision (b) or (c).

33 (4) If the board has not completely reduced its investments in
34 a company that satisfies the criteria in subdivision (b) or (c), when
35 the board anticipates that the board will reduce all investments in
36 that company or the reasons why a sale or transfer of investments
37 is inconsistent with the fiduciary responsibilities of the board as
38 described in Section 17 of Article XVI of the California
39 Constitution.

40 (5) Any information described in subdivision (e).

1 (6) A detailed summary of investments that were transferred to
2 funds or accounts devoid of companies with business operations
3 in Iran as described in subdivision (f).

4 (j) If the board voluntarily sells or transfers all of its investments
5 in a company with business operations in Iran, this section shall
6 not apply except that the board shall file a report with the
7 Legislature related to that company as described in subdivision
8 (i).

9 (k) Nothing in this section shall require the board to take action
10 as described in this section unless the board determines, in good
11 faith, that the action described in this section is consistent with the
12 fiduciary responsibilities of the board as described in Section 17
13 of Article XVI of the California Constitution.

14 (l) Subdivision (h) shall not apply to any of the following:

15 (1) Investments in a company that is primarily engaged in
16 supplying goods or services intended to relieve human suffering
17 in Iran.

18 (2) Investments in a company that promotes health, education,
19 or journalistic, religious, or welfare activities in Iran.

20 (3) Investments in a United States company that is authorized
21 by the federal government to have business operations in Iran.

22 (m) This section shall be operative only until the United States
23 revokes its current sanctions against Iran. When the United States
24 revokes its current sanctions against Iran, the board shall notify
25 the Secretary of State of this fact, and this section shall be repealed
26 on January 1 subsequent to the date that the Secretary of State
27 receives the notice described in this subdivision.

28 (n) This section shall be known and may be cited as the
29 California Public Investments Protection Act.

30 SEC. 3. Section 16642 of the Government Code is amended
31 to read:

32 16642. Present, future, and former board members of the Public
33 Employees' Retirement System or the State Teachers' Retirement
34 System, jointly and individually, state officers and employees,
35 research firms described in subdivision (d) of Section 7513.6 or
36 subdivision (d) of Section 7513.7, and investment managers under
37 contract with the Public Employees' Retirement System or the
38 State Teachers' Retirement System shall be indemnified from the
39 General Fund and held harmless by the State of California from
40 all claims, demands, suits, actions, damages, judgments, costs,

1 charges and expenses, including court costs and attorney's fees,
2 and against all liability, losses, and damages of any nature
3 whatsoever that these present, future, or former board members,
4 officers, employees, research firms, or contract investment
5 managers shall or may at any time sustain by reason of any decision
6 to restrict, reduce, or eliminate investments pursuant to Sections
7 7513.6 and 7513.7.

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